IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6--11--2006

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE Ms. JUSTICE K. SUGUNA

W.A. Nos. 2430/2002 & 398/2003

W.A. No. 2430/2002
K. Moorthy ..Appellant/Petitioner

Vs.

1. The Regional Director,
Oil and Natural Gas Corporation Ltd.,
Southern Region Business Centre,
11th Floor, MMDA Towers,
Egmore, Chennai 600 008.

2. The General Manager (Operations),
Oil and Natural Gas Corporation Ltd.,
Southern Region Business Centre,
9th Floor West, MMDA Towers,
Egmore, Chennai 600 008.

3. The Superintendent Engineer (WSS),
(Production), Oil and Natural Gas
Corporation Ltd., 9th Floor West,
MMDA Towers, Egmore,
Chennai - 600 008. ..Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the portion of the order in W.P. No. 15703 of 1996 passed on 18.6.2002 insofar as it relates to denial of backwages to the appellant praying for Certiorarified Mandamus calling for the records pertaining to the second respondent in reference No.MAS/SRBC/OBG/P&S/PF/52/72/894 dated 24.12.96 and quash the same and further direct the respondents to permit the petitioner to rejoin duty as Deputy Superintendent (Production) Oil and Natural Gas Corporation Limited and also direct consequential payment at all service benefits applicable to the petitioner under service rules.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Appellant :: Mr.A.L.Somayaji,Senior Counsel for
M/s. S. James and
A.D. Jagadishchandran

For Respondents 1 & 2 :: Mr.G. Masilamani,
Senior Counsel for
M/s. King & Partridge

W.A. No. 398/2003

1. The General Manager Head -Regional
Office, Formerly known as the Regional
Director, M/s. Oil and Natural Gas
Corporation Ltd., Southern Region'
Business Centre, 11th Floor East,
MMDA Towers, Egmore,
Chennai - 8.

Cause Title accepted as per the
order of this Court dated 09.01.2003
and made in WAMp.33/2003.

2. The General Manager,
Oil & Natural Gas Corporation Ltd.,
Southern Region Business Centre,
9th Floor West, MMDA Towers,
Egmore, Chennai -8. ..Appellants/Respondents 1 & 2

Vs.

K. Moorthy ..Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the portion of the order in W.P. No. 15703 of 1996 passed on 18.6.2002.

For Appellants :: Mr.G. Masilamani, Senior Counsel for
M/s. King & Partridge

For Respondent :: Mr.A.L. Somayaji, Senior counsel for
M/s. S. James and
A.D. Jagadishchandran

WEB COPY

J U D G M E N T

K. SUGUNA,J.

W.A. No. 2430/2002 has been filed challenging the order passed in W.P. No. 15730/96 dated 18.6.2002 denying backwages and the same order has been challenged by the Corporation in W.A. No. 398/2003 as against the reinstatement of the appellant in W.A. No. 2430/2002. For convenience

https://hcservices.ecourts.gov.in/hcservices/

sake, the parties shall be referred in the same rank as they are arrayed in W.A. No. 2430/2002.

2. The facts leading to the issue are:

The case of the appellant is, while he was working as Deputy Superintendent Engineer (Production), after availing medical leave, he had joined duty on 6.6.96. But, again, from 10.6.96 to 26.6.96, he had applied for casual leave and for the said leave, he had submitted a leave application on 10.6.96 and he had joined duty on 27.6.96. After working for one day, again, he had applied for medical leave from 28.6.96 to 12.7.96. However, by a telegram dated 4.7.96, the appellant was informed that he is on unauthorised absence and further by a subsequent communication, the appellant was further informed that action is contemplated against him under Oil and Natural Gas Corporation Limited Leave Rules, 1995 (hereinafter referred as "Leave Rules"). Immediately on 7.7.96, the appellant sent a fax message that he is joining duty on 8.7.96 and accordingly, he joined duty on 8.7.96. But the respondent Corporation, by communication dated 9.7.96, informed the appellant that his joining report dated 8.7.96 had not been accepted. Again, the appellant submitted another leave letter dated 14.7.96 requesting leave from 9.7.96 to 17.7.96 along with medical certificate. According to the appellant, since he had to undergo surgery on 25.7.96, medically, he was advised to be in rest from 18.7.96 to 24.7.96. On the basis of this advice, the appellant again applied for leave from 18.7.96 to 24.7.96. along with medical certificate. But, by communication dated 23.7.96, the appellant was informed that the leave sought for had not been granted and action was being contemplated against him for non-compliance of the Leave Rules. According to the appellant, he underwent a surgery on 25.7.96 and another surgery on 29.7.96 and he had also informed the respondent Corporation by letter dated 24.7.96 about his first surgery and by a subsequent letter, he had informed about his second surgery also. Besides, by letter dated 13.8.96, he had brought to the notice of the respondent Corporation that he was discharged from the hospital on 1.8.96 and since, he was advised to be in rest upto 17.8.96, along with a copy of the discharge summary, the appellant had informed that he will be joining duty on 19.8.96 and the appellant reported for duty on 19.8.96 and submitted his joining report along with fitness certificate. But, the 3rd respondent had made a note in the joining report of the appellant that the same cannot be accepted as orders are pending for the decision of the competent authority and the appellant was informed that he will not be permitted to join duty since orders are awaited from the competent authority. Hence, the appellant was forced to file W.P. No. 15703 /96 for issue of a direction directing the respondents to permit the appellant to rejoin duty as Deputy Superintendent (Production) and for consequential benefits. However, in W.P.M.P. NO. 24999/2001, the appellant sought for amendment of the original prayer as hereunder:

> "This Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

in the nature of writ calling for the records pertaining to the proceedings of the 2nd respondent in Ref. No.MAS/SRBC/OBG/P &S/PF/42/72/894 dated 24.12.1996 and quash the same and further direct the respondents to permit the petitioner to rejoin duty as Deputy Superintendent (Production) Oil and

Natural Gas Corporation Limited and also direct consequential payment of all service benefits applicable to the petitioner under service rules and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

The said writ petition was disposed of by the learned Single Judge, by order dated 18.6.2002, on the following terms:

"7. For the foregoing reasons, the impugned order is set aside and the writ petition is allowed. The respondents are directed to permit the petitioner to join duty. The petitioner is entitled to the benefit of continuity of service. However, he is not entitled to the backwages..."

As against the denial of backwages, as already stated, the appellant in the writ petition has filed W.A. No. 2430/2002 and challenging the order of reinstatement, the Corporation has filed W.A. N0. 398/2003.

3. According to the learned senior counsel for the appellant, the impugned order dated 24.12.96 has been passed on the assumption thae leave availed by the appellant had exceeded the maximum limit and under that pretext, orders were issued that the appellant is deemed to have resigned from duty with effect from 4.12.95. According to the learned senior counsel, the relevant rule applicable to the issue in question is Rule 14 of the Leave Rules applicable to the respondent Corporation, which reads as follows:

"Rule 14.Extra Ordinary Leave (EOL):

(1) Extra ordinary leave shall be admissible to an Employee in special circumstances when:
   (a) no other kind of leave is admissible under these Rules, or
   (b) other kind of leave being admissible, the Employee applies in writing for the grant of extra ordinary leave.
(2) The period of extra ordinary leave granted on any one occasion shall not exceed 3 months, except under the following circumstances, namely:-
   (a) if such leave is availed of on medical grounds duly supported by medical certificate, the maximum period admissible shall be 6 months;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Provided that in a case where such leave is required for undergoing treatment for any of the following diseases, the limit shall be 18 months;

(i) pulmonary tuberculosis and the application for leave is supported with a certificate from a specialist in tuberculosis; or

(ii) tuberculosis of any other part of the body and the application is supported with a certificate from a specialist in tuberculosis or a Civil Surgeon; or

(iii) leprosy in a recognized leprosy institution or by a Civil Surgeon or a specialist in a leprosy hospital recognized by the Company and the application for leave is supported with a certificate from the concerned Medical Officer; or

(iv) Cancer or mental illness and the application for leave is supported with a certificate from an institution recognized for the treatment of such diseases or by the Company's Authorised Medical Attendant or a Specialist in such diseases.

Provided further that leave upto 18 months may be sanctioned under the first proviso only if the Employee has put in one year service in the company on the date of proceeding on leave or on the date of expiry of the leave otherwise admissible under these Rules.

(3) Extra ordinary leave may also be granted to Employees who have put in minimum of three years of service for prosecuting studies in India/abroad subject to the following:

(a) The study proposed to be pursued should be certified to be in the interest of the Company.

(b) The Employee should produce clear proof of admission to University/Institution. Leave cannot be granted for contemplated studies where admission is not obtained.

(c) The ACR gradings for the last 3 years should be minimum above average (A-) or equivalent.

(d) An Employee once granted extra ordinary leave for pursuing particular course will not be allowed to change the nature of the course.

(e) In case an Employee, who is granted extraordinary leave for study purpose is not able to complete the studies successfully and resumes duty before, on or after expiry of the extraordinary leave so granted the entire period of such leave and/or absence shall not be reckoned while calculating years of service for his eligibility for promotion.

(f) Maximum admissible period of leave shall be 24 months from the total period of extra ordinary leave for study purposes connected with other types of leave due and admissible shall not exceed months.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

No request for extension of leave on any account will be entertained beyond 36 months.

(g) An Employee sanctioned extraordinary leave for study purposes shall be required to execute a bond to serve the Company for a period of 3(three) years on expiry of the extraordinary leave so granted as per the bond executed by him. The relevant proforma for bond is given at Annexure-ONGC:LR-1.

If such Employee fails to join his duties on the expiry of leave or resigns/quits the service of his own accord at any time within the period of three years from the date of expiry of extraordinary leave, he shall be liable to pay the Company an amount equal to 6(six) months pay plus dearness allowance as per the bond executed by him.

Provided that an Employee who is granted extraordinary leave for prosecuting higher studies in relaxation of the provisions mentioned above, shall be liable to pay the Company an amount equal to pay, dearness allowance, adhoc/interim relief, if any, that he would draw for a period of three years on return from leave.

(4) The competent authority may at its discretion convert a period of absence from duty without leave into extraordinary leave.

(5) Where an Employee fails to resume duty on the expiry of the period of extraordinary leave if the leave granted to him is the maximum that can be granted or where an Employee is granted a lesser amount of extraordinary leave than the maximum admissible under this Rule, remains absent from duty for any period which, together with extraordinary leave so granted, exceeds the limit up to which he could have been granted leave under this Rule, he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Company unless the Company may determine otherwise in view of the exceptional circumstances of the case.

(6) No leave salary shall be admissible during the period of extraordinary leave."

According to the learned senior counsel appearing for the appellant, as per Rule 14(5)of the above said Rules, the respondent Corporation is empowered to treat an employee as deemed to have resigned his post when the said employee fails to resume duty on the expiry of the period of extraordinary leave, if the leave granted to him is the maximum that can

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

be granted or when an employee, who is granted lesser number of extraordinary leave, than the maximum admissible under the Rules, remains absent from duty for a period together with extraordinary leave so granted exceeds the limit up to which he could have been granted leave under this Rule. As per this Rule, an employee is eligible for extraordinary leave on medical grounds for a maximum period of 6 months. According to the learned senior counsel, from 14.12.95 to 5.6.96, the appellant had availed leave only for a period of 175 days, which according to the learned senior counsel is less than 6 months. As such, by invoking the above said Rule, the appellant cannot be deemed to have resigned his post. By order dated 10.1.96, the leave availed by the appellant from 5.12.95 to 8.12.95 was treated as earned leave According to the learned senior counsel, for invoking Rule 14(5), the leave which was treated as earned leave was converted as extraordinary leave and the impugned order was passed. As such, according to the learned senior counsel, since the leave availed by the appellant is below 180 days, the impugned order is contrary to the Leave Rules of the respondent Corporation. Apart from this, according to the learned senior counsel appearing for the appellant, the appellant had availed leave only for a reasonable cause especially, on health grounds. It is not the case of the respondent Corporation that the appellant had not undergone surgery. Besides, the appellant had availed leave only with a medical certificate. That apart, according to the learned senior counsel, admittedly, by order dated 10.1.96, the competent authority had already approved the leave between 5.12.95 and 8.12.95 as earned leave. As such, the leave that has been granted by order dated 10.1.96 cannot be reviewed since, there is no such power under the relevant rules. Further, according to the learned senior counsel, when specific provisions have been made in the relevant rules, the respondent cannot alter the same to suit their convenience. According to the learned senior counsel, the appellant, admittedly, reported for duty on 19.8.96 and submitted his joining report. But, he was prevented from joining duty by the respondent Corporation. As such, according to the learned senior counsel, but for the mistake committed by the respondents, the appellant would have joined duty and he would have earned his livelihood. The learned senior counsel further contended that for the mistake committed by the respondent Corporation, the appellant cannot be denied the backwages. That apart, according to the learned senior counsel, because of the action of the respondents in not allowing the appellant to join duty alone, the appellant could not jon duty. As such, when the action of the respondents in not permitting the appellant to report for duty is illegal, certainly, the appellant is entitled for backwages.

4. On the other hand, learned senior counsel appearing for the respondent Corporation contended that infact, by order dated 29.3.95, the appellant was transferred from Madras to Rajamundry. On receipt of the above said transfer order, under one pretext or the other, stating various reasons like visiting home town, his mother was not well, etc. the appellant had availed leave. In fact, according to the learned senior

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

counsel, the appellant had requested to defer the transfer order and the respondent Corporation was magnanimous enough and by proceedings dated 17.11.95, the transfer order was deferred for some time. According to the learned senior counsel, as per the Leave Rules, medical leave can be availed only on a medical certificate. But, the appellant was in the habit of merely sending a leave letter stating that he requires leave since he was unwell. Since the appellant was availing leave periodically, by telegram dated 13.10.95, 27.10.95 and 16.11.95, he was directed to report for duty immediately. After 167 days continuous absence, the appellant joined duty on 27.11.95 and medical certificate was produced only for the period from 14.6.95 to 30.8.95. Afer joining duty, by his representation dated 27.11.95, the appellant requested the Corporation to treat his leave as earned leave and half-pay leave. From 27.11.95, appellant had worked only upto 4.12.95. Again on 4.12.95, the appellant applied for 4 days' leave suffixing the holidays on 9.12.95 & 10.12.95. But, he did not join duty on the expiry of 4 days' leave. On the other hand, on 18.12.95, the appellant applied for leave from 14.12.95 to 15.1.96 and the same was subsequently extended by letter dated nil till 31.1.96 and another letter dated 31.1.96 seeking extension till 15.2.96. But, these leave letters were not supported by medical certificates, so also, leave letter submitted on 18.12.95. Hence, since the leave sought for was medical leave, the respondent Corporation, by its proceedings dated 6.2.96, had informed the appellant that the leave sought by him is not supported by medical certificate and directed him to join duty. But, the appellant did not join duty at all. Hence, on 13.2.96, again, the appellant was called upon to report for duty. But, by letter wrongly dated as 14.12.96, the appellant sought for extension of leave upto 15.3.96. Hence, by proceedings dated 12.3.96, the appellant was directed to meet the Medical Officer of the respondent Corporation on 21.3.96 along with his medical reports. Inspite of the specific direction, by letter dated 20.3.96, the appellant informed the respondent Corporation that on 31.3.96, he would meet the medical officer before joining duty. Inspite of these assurances, the appellant did not join duty on 31.3.96. On the other hand, he sought extension of leave upto 30.4.96. In view of his continuous absence, the respondents were constrained to invoke Rule 14(5) of the Leave Rules applicable to the respondent Corporation. Consequently, a show cause notice dated 8.4.96 was issued calling upon the appellant to show cause as to why by invoking Rule 14(5), it should not be treated that he is deemed to have resigned from duty with effect from 4.12.95, i.e, the last date on which the appellant had attended office. But, when that letter was sent through post, the same was returned on the ground that the appellant had gone to Singapore and that he is not available. Consequence of this, the respondent Corporation was forced to issue a paper publication on 21.5.96 calling upon the appellant to report for duty within a period of 3 days. However, the appellant submitted his reply on 6.6.96. Hence, basing on this, by proceedings dated 10.6.96, the appellant was called upon to appear before the Medical Officer of the respondent Corporation. But, on 10.6.96, again, the appellant sought for extension of leave till 12.7.96 and by proceedings dated 4.7.96, the appellant was informed that he is not

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

eligible for the leave sought for. On receipt of this, by letter dated 7.7.96, the appellant had informed that he is willing to join duty on 8.7.96, but on 8.7.96, the appellant did not join duty. On the other hand, he sought for extension of leave originally, by letter dated 14.7.96 upto 17.7.96 and subsequently, on 18.7.96, upto 24.7.96 By the proceedings of the respondent Corporation dated 23.7.96, leave was refused and subsequent to this, the appellant had reported for duty on 19.8.96. But, he was not permitted to join duty. According to the learned senior counsel, actually, the reason for availing leave is to get rid of the transfer order issued to the appellant. Apart from this, according to the learned senior counsel, though the appellant had taken a stand before this Court that basing on his ill-health, he was forced to avail leave, in fact, the reasons given in the various leave letters did not relate to ill-health. According to the learned senior counsel, by letter dated 10.6.96, the reason given for availing leave is shifting of residence. Besides, since the appellant was not serious about serving the respondent Corporation, he was continuously absent. Apart from this, the appellant cannot claim leave as a matter of right. In fact, according to the learned senior counsel appearing for the respondent Corporation, "extraordinary leave" can be granted only upto a maximum of 3 months and on medical grounds, duly supported by medical certificate, the same can be granted upto a period of 6 months. As far as the appellant is concerned, he had availed leave, as referred above, by sending a leave application stating that since he is not well, he requires leave. That apart, according to the learned senior counsel, the leave availed by the appellant was not supported by medical certificate. Even as per the rejoinder submitted by the appellant, on reporting for duty on 19.8.96 alone, he had produced the medical certificate. The appellant is eligible only for 3 months extraordinary leave under Rule 14(2), by invoking Rule 14(5) after the expiry of 3 months, it can be construed that the appellant is deemed to have resigned his duty. That apart, according to the learned senior counsel, even otherwise also, it cannot be construed , as per the wordings of the relevant rules, only on the expiry of 180 days extraordinary leave alone, the deeming provisions can be applied. If the leave availed is below 180 days also, invoking Rule 14(5), it can be construed that the concerned employee is deemed to have resigned his post and shall accordingly cease to be in employment of the respondent Corporation. In fact, according to the learned senior counsel, inspite of the telegrams dated 13.10.95, 27.10.95 and 16.11.95, calling upon the appellant to report for duty, the appellant did not report for duty. That apart, according to the learned senior counsel, the reasons given for extension of leave is not on health grounds, but on various other grounds. As such, the appellant cannot claim that he is entitled for extraordinary leave for a period of 6 months namely, 180 days. As per the terms of Rule 14(5), it cannot be construed that the competent authority is bound to grant 6 months leave. Extraordinary leave for 180 days can be given only if it is on health grounds. Since, the appellant had availed leave not only on health grounds, but also for various other reasons, and as per the provisions, he did not produce any medical certificate also, according to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the learned senior counsel, Rule 14(2) alone will apply and not Rule 14(2)(a) in the case of the appellant. As such, on the expiry of 3 months leave, as per Rule 14(5), the appellant is deemed to have resigned his duty. That apart, even otherwise also,.as per the provisions of Rule 14(5), it cannot be construed that only on expiry of 180 days alone, the employee, who is on leave, is deemed to have resigned his post. Even before the expiry of 180 days, deeming provisions can be invoked. As far as the appellant is concerned, just to get rid of his transfer, under one pretext or the other, he had applied for leave. Besides, the appellant had undergone the operation only during July 1996. The leave letter wrongly dated 14.12.96 was received by the respondent Corporation on 26.2.96 in which the appellant had sought for extension of leave upto 15.3.96. Along with the said letter, medical certificate was enclosed wherein the illness mentioned was peptic ulcer and migraine. Consequence of this, the respondent Corporation was having serious doubts about the bona fide intention of the appellant. Hence, on 6.6.96, when the appellant submitted his joining report, the same was not accepted since his rejoining was subject to his appearance before the Medical Officer. Subsequent to 6.6.1996 also, the appellant availed long leave. That apart, according to the learned senior counsel, surgery which the appellant had undergone is a simple and uncomplicated one and the disease suffered by the appellant is a very trivial one, which is very well treatable and does not warrant such a prolonged absence on the part of the appellant. It is apparent that the appellant's only intention was to somehow try and avoid his posting at Rajamundri. That apart, according to the learned senior counsel for the respondent Corporation, the Corporation had offered enough opportunity to the appellant to report for duty. Inspite of this, the appellant failed to do so, which forced the respondent Corporation to take action under Rule 14(5) of the leave rules. Besides, the appellant had not submitted leave letters with the medical certificate and on each and every occasion, the appellant had produced medical certificate only after several reminders and the medical certificates produced by him were highly belated and only an afterthought. That apart, the reasons furnished in the medical certificate were also not serious enough to warrant such a prolonged absence. Further, according to the learned senior counsel, it is the discretionary power of the competent authority to grant extraordinary leave under Rule 14(2)(a) and it cannot be claimed as a matter of right. That apart, according to the learned senior counsel, the appellant is deemed to have resigned his post under Rule 14(5) on the expiry of 3 months period itself. In the circumstances stated above, the question of permitting the appellant to join duty when he reported for duty on 19.8.96 does not arise at all. That apart, according to the learned senior counsel, even otherwise also, when discretionary power has been conferred on the competent authority to sanction or not to sanction the leave, the impugned order of the respondent Corporation is well within the rules and the order of the learned Single Judge regarding reinstatement has to be quashed. When the appellant's claim for reinstatement itself cannot be entertained as per rules, question of payment of backwages does not arise.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. We have considered the above submissions of the learned senior counsel on either side.

6. Now, the question that arises for consideration is in the circumstances stated above, by invoking Rule 14(5) of the Leave Rules, whether the order passed by the respondent Corporation dated 24.12.1996 is valid or not. The leave availed by the appellant upto 26.11.1995 has been approved by the respondent Corporation. Even as per the counter filed by the respondent, the leave availed by the appellant from 5.12.1995 to 8.12.1995 was sanctioned as earned leave by the proceedings of the respondent Corporation dated 10.1.1996. The impugned order has been passed pursuant to the show-cause notice dated 8.4.1996. The said show-cause notice was issued to the appellant for the leave availed by him with effect from 5.12.1995 and from 5.12.1995 to the date of the show-cause notice namely, 8.4.1996, the appellant had availed 117 days leave. Out of this, from 5.12.1995 to 8.12.1995, as referred above, by the order of the respondent Corporation dated 10.1.1996, it was sanctioned as earned leave. As per the working paper of the respondent Corporation, to pass an order invoking Rule 14(5), one should have availed the maximum number of extraordinary leave and not join duty even after the expiry of the same. According to the working paper, the appellant had not availed any extraordinary leave at any stage. As such, as per the above said wordings of the working paper, unless and until the appellant had availed extraordinary leave, Rule 14(5) cannot be invoked and an order of deemed resignation cannot be passed. But, as far as the contention of the learned senior counsel appearing for the respondent Corporation, by invoking Rule 14(4), the competent authority has got power to convert the period of absence from duty without leave into extraordinary leave at his discretion is concerned, two conditions should be complied with for invoking Rule 14(4). As such, the power under Rule 14(4) can be exercised by the competent authority to convert the period of absence from duty as extraordinary leave only if the period of absence from duty is without leave. But, it is an admitted case of the appellant that the appellant had applied for leave from 5.12.1995 to 8.12.1995 and since he was eligible, by order dated 10.1.1996, the same was sanctioned as earned leave. As such, with regard to the above said period, by exercising the power under Rule 14(4), earned leave already sanctioned cannot be converted as extraordinary leave. Under these circumstances, the question of invoking Rule 14(5) and passing the impugned order is contrary to the said Rule. The argument of the learned senior counsel for the respondent Corporation that the appellant is eligible only for a period of 3 months leave i.e, according to the learned senior counsel, as far as the appellant is concerned, only Rule 14(2) will apply and not Rule 14(2)(a), as such the appellant is eligible only for 3 months extraordinary leave is concerned, the impugned order has been passed in pursuance of the show-cause notice dated 8.4.1996. As per the said show-cause notice, the same is issued invoking Rule 14(2), 14(2)(a) and 14(5). If Rule 14(2)(a) is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

not applicable to the case of the appellant, issuing show-cause notice under Rule 14(2)(a) was not waranted. As such, even as per the show-cause notice, the case of the petitione falls under Rule 14(2)(a). As per this, the appellant is eligible for 6 months extraordinary leave. As referred above, the show-caue notice has been issued for the leave availed by the appellant from 4.12.1995 and the date of the show-cause notice is 8.4.1996. As already stated, by order dated 10.1.1996, the leave availed from 5.12.1995 to 8.12.1995 was sanctioned as earned leave. As such, from 5.12.1995, upto the date of show-cause notice, the appellant had availed only 117 days leave. But, as per Rule 14(5), the deeming provisions relating to resignation can be invoked only on the expiry of the maximum period of extraordinary leave. Since, Rule 14(2)(a) was invoked, the appellant is eligible for a maximum period of 180 days extraordinary leave. As such, before the expiry of 180 days, invoking deeming provisions and passing the impugned order is prima facie illegal and consequently, the same cannot be allowed to stand.

7. With regard to the other contention of the learned senior counsel appearing for the respondent Corporation that even before the expiry of 180 days, provisions of Rule 14(5) can be invoked and orders can be passed is concerned, admittedly, as per the provisions of Rule 14(5), which reads that "where an Employee fails to resume duty on the expiry of the period of extraordinary leave if the leave granted to him is the maximum that can be granted or where an Employee is granted a lesser amount of extraordinary leave than the maximum admissible under this Rule, remains absent from duty for any period which, together with extraordinary leave so granted, exceeds the limit up to which he could have been granted leave under this Rule, he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Company unless the Company may determine otherwise in view of the exceptional circumstances of the case", it is very clear that only in the event of the concerned individual failing to resume duty, on the expiry of the maximum period of extraordinary leave, Rule 14(5) can be invoked. As such, the contention of the learned senior counsel tht even prior to the expiry of the maximum period of leave, Rule 14(5) can be invoked is not correct. That apart, it is the specific case of the appellant in the reply submitted to the show-cause notice on 6.6.1996 that he had asubmitted a leave letter on 14.12.1995 on medical grounds, on 23.2.1996, he had submitted a medical certificate issued by the competent Medical Officer for the period from 14.12.1995 to 31.3.1996 and for the period from 1.4.1996 to 30.6.1996, he had submitted leave application on medical grounds along with certificated issued by the competent Medical Officer. Though the appellant had availed leave for the previous period for various reasons, as contended by the learned counsel for the appellant, since the impugned order has been passed only in respect of the leave availled by the appellant with effect from 4.12.1995 till 8.4.1996, as mentioned above, the appellant had applied and availed leave following the procedure mentioned in the said Rules. As such, the contention of the learned senior counsel for the Corporation in this regard is rejected.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. It is an undisputed fact that the appellant, after availing 117 days leave, had joned duty on 27.11.1995 and again, the appellant had continued to work upto 4.12.1995 and from 5.12.1995 to 8.12.1995, the leave availed by him was sanctioned as earned leave. Though the show-cause notice has been isused on 8..4.1996, the appellant was on leave upto 30.6.1996 and subsequently, he had reported for duty only on 19.8.1996. It is an undisputed fact that since the appellant was availing leave periodically under one pretext or the other, he was not permitted to join duty. Though as per the Rules applicable to the respondent Corporation, the reason on the basis of which the impugned order dated 24.12.1996 has been pased is due to the leave availed by the appellant. In fact, the appellant did not have any leave to his credit subsequent to 30.6.1996 and the leave was also availed without any permission. Though the appellant had submitted leave application for the subsequent period, no orders were passed sanctioning the leave sought for. As rightly contended by the learned senior counsel for the respondent Corporation, leave cannot be claimed as a matter of right. But, at the same time, as referred above, to invoke Rule 14(5), one should have remained absent even after the expiry of the maximum period of leave namely, 180 days. Admittedly, the appellant had availed leave only for 175 days and apart from this, unless, the leave had been sanctioned, the appellant cannot claim leave salary. Consequence of the appellant remaining absent for a period of 175 days and also subsequent to that, the respondent Corporation was forced to pass the impugned order. Apart from this, though the appellant had reported for duty on 19.8.96, he did not report before the medical officer before joining duty as directed and remained continuously absent and therefore, he cannot expect that he should be permitted to join duty immediately on his reporting for duty since, it is not due to the mistake of the respondent Corporation that proceedings were initiated and it is only due to the appellant's frequent absence during various spells. Having remained absent on one pretext or the other, the appellant cannot claim that he is entitled for backwages. As such, the order of the learned Single Judge with regard to his reinstatement with continuity of service and also denial of backwages is confirmed. Both the writ appeals are dismissed. No costs.

Sd/
Asst.Registrar

WEB COPY

/true copy/

Sub Asst.Registrar

nv

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Regional Director,
   Oil and Natural Gas Corporation Ltd.,
   Southern Region Business Centre,
   11th Floor, MMDA Towers,
   Egmore, Chennai 600 008.

2. The General Manager (Operations),
   Oil and Natural Gas Corporation Ltd.,
   Southern Region Business Centre,
   9th Floor West, MMDA Towers,
   Egmore, Chennai 600 008.

3. The Superintendent Engineer (WSS),
   (Production), Oil and Natural Gas
   Corporation Ltd., 9th Floor West,
   MMDA Towers, Egmore, Chennai - 600 008.

1 cc To M/s.James , Advocate, SR.52486.
2 cc To M/S.King & Patridge, Advocate, SR.53161 & 53170.

W.A. Nos.2430/2002 & 398/2003

KG(CO)
RVL 21.11.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/